

CTS
ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
SEP 21 2016

CLERK, U.S. DISTRICT COURT
By AK-300
Deputy

TAMMY FARIAS

Plaintiff.

v.

NORTHSTAR LOCATION
SERVICES, L.L.C.

Defendant.

CIVIL ACTION NO.

4-16CV-877-Y

TRIAL BY JURY DEMANDED

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Tammy Farias, complains of Northstar Location Services, L.L.C. Defendant, and for cause of action would respectfully show as follows:

PRELIMINARY STATEMENT

1. This is an action for damages brought by Plaintiff Tammy Farias against Defendant Northstar Location Services, L.L.C. for violations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A)(iii).
2. Defendant called Plaintiffs' cellular telephone number using an automated telephone dialing system and should be fully aware that Defendant had no prior express or implied consent to call the cellular telephone.
3. Plaintiff contends that the Defendant has acted voluntarily, intentionally and under its own free will and knew or should have known that Defendant was engaged in acts that constitute violations of several statutes.

JURISDICTION AND VENUE

4. Jurisdiction of this Court arises under 47 U.S.C. §227(b)(3).
 5. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1391b because Defendant engages in business within this state, to wit debt collection.
 6. Venue is proper pursuant to 28 U.S.C. §1391b and 47 U.S.C. §227(b)(3) .
-
7. Venue in the Northern District of Texas, Fort Worth Division is proper in that the Plaintiff resides in State of Texas, Tarrant County, City of Fort Worth, the Defendant transacts business here, and the conduct complained of occurred here.

PARTIES

8. The Plaintiff in this lawsuit is Tammy Farias, (Mrs. Farias) a natural person and a citizen of Tarrant County, Texas.
9. Defendant in this lawsuit is Northstar Location Services, L.L.C. (herein after “Northstar Location”) a company with principal office at 4285 Genesee Street, Cheektowaga, NY 14225.
10. Northstar Location may be served with process by serving its registered agent for service of process: C T Corporation System, 1999 Bryan St., STE 900, Dallas, TX 75201.

FACTUAL ALLEGATIONS

11. Northstar Location made at least eight (8) individual telephone calls to Mrs. Farias cellular telephone from phone number (888) 820-0968 that she has been able to document.
12. Mrs. Farias made an open records request to the Public Utility Commission of Texas and requested all records submitted by Northstar Location. Upon information and belief, Northstar Location assigned the telephone number (888) 820-0968 to a telephone system manufactured by CASTEL.
13. Upon information and belief, Northstar Location uses the telephone number (888) 820-0968.
14. Northstar Location called Mrs. Farias cellular telephone number on the following dates and times:
- | | |
|------------------------------------|------------------------------------|
| 1. December 15, 2015 at 08:15 a.m. | 7. December 31, 2015 at 11:49 a.m. |
| 2. December 16, 2015 at 08:10 a.m. | 8. January 06, 2016 at 06:32 p.m. |
| 3. December 18, 2015 at 08:09 a.m. | |
| 4. December 21, 2015 at 03:23 p.m. | |
| 5. December 23, 2015 at 12:39 p.m. | |
| 6. December 29, 2015 at 11:06 a.m. | |
15. On several occasions Mrs. Farias answered the telephone calls and there was a noticeable period of silence or dead air before a representative came on the line.
16. On at least one occasion, Mrs. Farias answered the incoming telephone call and stated, “stop calling”, “stop calling this phone”, or “you have the wrong number”.
17. Upon information and good faith belief, the telephone calls identified above were placed to Mrs. Farias wireless phone number by an Automatic Dialing Announcing Device

(“ADAD”). The ADAD is registered to Northstar Location by the Public Utility Commission of Texas with permit number 070104.

18. Upon information and good faith belief, the telephone calls identified above were placed to Mrs. Farias wireless phone number using an automatic telephone dialing system (ATDS) as defined by the Federal Communications Commission (FCC).

19. Upon information and belief, Mrs. Farias received additional calls to her cellular phone from Northstar Location that she was not able to document. Mrs. Farias intends to obtain the phone records of Northstar Location through the discovery process.
20. Upon information and belief, Northstar Location placed the calls to Mrs. Farias wireless telephone number voluntarily.
21. Upon information and belief, Northstar Location placed the calls to Mrs. Farias wireless telephone number under its own free will.
22. Upon information and belief, Northstar Location had knowledge that it was using an automatic telephone dialing system to place each of the telephone calls identified above.
23. Upon information and belief, Northstar Location intended to use an automatic telephone dialing system to place each of the telephone calls.
24. Upon information and belief, Northstar Location maintains business records that show all calls placed by Northstar Location to Mrs. Farias cellular telephone number.
25. Northstar Location called Mrs. Farias cellular phone for a non-emergency purpose.
26. Mrs. Farias has no prior or present established relationship with Northstar Location.
27. The acts alleged herein all took place in Tarrant County, Texas in that the communications were received there.

28. Northstar Location used an automatic telephone dialing system to dial Mrs. Farias's cellular telephone from phone numbers as defined by the Telephone Consumer Protection Act, 47 U.S.C. §227(a)(1).

COUNT I

**VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. §227(b)(1)(A) BY DEFENDANT NORTHSTAR LOCATION SERVICES, L.L.C.**

29. Paragraphs 1 through 28 are re-alleged as though fully set forth herein.
30. Mrs. Farias and Northstar Location do not have an established business relationship within the meaning of 47 U.S.C. §227(a)(2).
31. Northstar Location called Mrs. Farias's cellular telephone using an "automatic telephone dialing system" within the meaning of 47 U.S.C. §227(a)(1).
32. 47 U.S.C. §227(b)(1)(A) which states in part;
- (b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—
- (1) PROHIBITIONS.—It shall be *unlawful for any person* within the United States, or any person outside the United States if the recipient is within the United States—
- (A) *to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—*

33. In each telephone communication referenced in ¶14, Northstar Location has demonstrated willful or knowing non-compliance with 47 U.S.C. § 227 (b)(1)(A) by using an automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call Mrs. Farias's cellular telephone number, which is assigned to a cellular telephone service *with no prior express consent* and for *no emergency purpose*.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- b) ~~Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B), which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.~~
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- d) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff is entitled to and hereby demands trial by jury.

Dated: September 15, 2016

Respectfully Submitted,


Tammy Farias
1413 Clinton Ave.
Fort Worth, TX 76164
(817) 658-5353
tammyfarias@yahoo.com

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Tammy Farias

(b) County of Residence of First Listed Plaintiff Tarrant

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Northstar Location Services, L.L.C.

County of Residence of First Listed Defendant Erie County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227(b)(1)(A)(iii)

Brief description of cause:

Violations of the Telephone Consumer Protection Act (TCPA)

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/15/2016

SIGNATURE OF ATTORNEY OF RECORD

Tammy Farias

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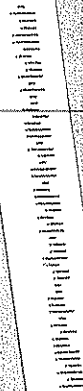
JUDGE

MAG. JUDGE

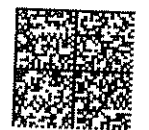
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T. Farias
1413 Clinton Avenue
Fort Worth, TX 76164

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